

Message Text

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TAGS: WIPO, EINV

SUBJECT: NICE DIPLOMATIC CONFERENCE

REFS: GENEVA 3372; SCHROEDER-WINTER TELCON, MAY 4

1. USDEL SHOULD, IN FIRST INSTANCE, SUPPORT DIRECTOR
GENERAL'S PROPOSAL THAT THE REVISED NICE AGREEMENT (ARTICLE
13(1)(A)) AND THE CLASSIFICATION (ARTICLE 1(4)) BE
"ESTABLISHED IN THE ENGLISH AND FRENCH LANGUAGES, BOTH
TEXTS BEING EQUALLY AUTHENTIC" AND SHOULD RESIST EFFORTS TO
HAVE RUSSIAN AND/OR SPANISH INTRODUCED AS AUTHENTIC TEXTS
OF THE NICE AGREEMENT. ACCORDING TO THE AFOREMENTIONED
ARTICLES, THE ENGLISH AND FRENCH TEXTS OF THE AGREEMENT WILL
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OF COURSE, BE ESTABLISHED AT THE DIPLOMATIC CONFERENCE AND
BE OPEN FOR SIGNATURE AT THE CONCLUSION OF THE CONFERENCE;
THE ENGLISH AND FRENCH TEXTS OF THE CLASSIFICATION WILL BE
ESTABLISHED BY A COMMITTEE OF EXPERTS SUBSEQUENT TO THE
CONFERENCE.

2. THE RATIONALE FOR THIS POSITION IS THE FOLLOWING:

(A) AT THE REQUEST OF THE AD HOC COMMITTEE OF EXPERTS, THE INTERNATIONAL BUREAU CAREFULLY EXAMINED THE QUESTIONS OF AUTHENTIC ENGLISH TEXTS FOR THE AGREEMENT AND THE CLASSIFICATION, AND REACHED AN AFFIRMATIVE CONCLUSION OF BOTH QUESTIONS.

(B) SINCE THE LOCARNO CONFERENCE IN 1968, THE TEXTS OF ALL REPEAT ALL WIPO TREATIES HAVE BEEN ESTABLISHED IN ENGLISH AND FRENCH, EACH BEING EQUALLY AUTHENTIC. THE MOST RECENT SUCH TREATY IS THE "TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE" WHICH WAS SIGNED AT BUDAPEST ON APRIL 28 IN ENGLISH AND FRENCH, BOTH TEXTS BEING EQUALLY AUTHENTIC.

(C) THE CONVENTION ESTABLISHING THE WIPO, NEGOTIATED AT STOCKHOLM IN 1967, WAS ESTABLISHED IN ENGLISH, FRENCH, RUSSIAN AND SPANISH, ALL TEXTS BEING EQUALLY AUTHENTIC. HOWEVER, THIS CONVENTION IS NOT REPEAT NOT A SUBSTANTIVE INDUSTRIAL PROPERTY AGREEMENT AND THEREFORE DOES NOT ESTABLISH A PRECEDENT FOR A TREATY SUCH AS NICE.

(D) THE ESTABLISHMENT OF AN AUTHENTIC ENGLISH TEXT OF THE NICE CLASSIFICATION IS ESPECIALLY IMPORTANT AND RELEVANT TO FUTURE IMPLEMENTATION OF THE TRADEMARK REGISTRATION TREATY (TRT). UNDER THE TRT SYSTEM, THE INTERNATIONAL APPLICATION FILED FOR INTERNATIONAL REGISTRATION OF A TRADEMARK MAY BE IN ENGLISH OR FRENCH AND THE LIST OF GOODS AND SERVICES FOR WHICH THE MARK IS INTENDED AND WHICH MUST ACCOMPANY EACH APPLICATION SHOULD, AS FAR AS POSSIBLE, BE BASED ON THE ALPHABETICAL LIST OF GOODS AND SERVICES OF THE LIMITED OFFICIAL USE

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NICE CLASSIFICATION.

3. AS A FALL-BACK AND AFTER CONSULTATION WITH OTHER KEY DELEGATIONS, USDEL MAY SUPPORT OR PROPOSE THE COMPROMISE FORMULA ACCEPTED AT THE BUDAPEST CONFERENCE BY GROUP B (INCLUDING SPAIN) AND SOCIALIST DELEGATIONS. ARTICLE 18 (1)(B) PROVIDES THAT THE BUDAPEST TREATY "SHALL BE SIGNED IN A SINGLE ORIGINAL IN THE ENGLISH AND FRENCH LANGUAGES, BOTH TEXTS BEING EQUALLY AUTHENTIC." ARTICLE 18(1)(B) FURTHER PROVIDES THAT "OFFICIAL TEXTS OF THIS TREATY SHALL BE ESTABLISHED BY THE DIRECTOR GENERAL, AFTER CONSULTATION WITH THE INTERESTED GOVERNMENTS AND WITHIN TWO MONTHS FROM THE DATE OF SIGNATURE OF THIS TREATY, IN THE OTHER LANGUAGES IN WHICH THE CONVENTION ESTABLISHING THE WORLD INTELLECTUAL PROPERTY ORGANIZATION WAS SIGNED". THE OTHER LANGUAGES ARE RUSSIAN AND SPANISH. HOWEVER, USDEL SHOULD MAINTAIN POSITION THAT THE NICE CLASSIFICATION SHOULD BE IN ENGLISH AND FRENCH ONLY.

4. WE UNDERSTAND THAT SPAIN HAS PROPOSED THAT THE NICE CLASSIFICATION BE ESTABLISHED IN THE SPANISH LANGUAGE AS AN AUTHENTIC TEXT. USDEL SHOULD RESIST SUCH A PROPOSAL AND POINT OUT THAT THERE IS ONLY ONE COUNTRY PRESENTLY A MEMBER OF NICE THAT HAS SPANISH FOR A PRIMARY LANGUAGE. FURTHER, ALTHOUGH WE HAVE NO READILY AVAILABLE STATISTICS

ON THE REGISTRATIONS IN FORCE IN SPAIN, THERE ARE 770,000 REGISTRATIONS IN FORCE IN THE MEMBER COUNTRIES OF NICE WHICH USE ENGLISH AS A PRIMARY OR OFFICIAL LANGUAGE AND THERE ARE 550,000 REGISTRATIONS IN FORCE IN MEMBER COUNTRIES OF NICE WHICH USE FRENCH AS A PRIMARY OR OFFICIAL LANGUAGE. WE ARE RELATIVELY CERTAIN THAT THE NUMBER OF ENGLISH AND FRENCH REGISTRATIONS ARE EACH SIGNIFICANTLY GREATER THAN THE REGISTRATIONS IN FORCE IN SPAIN.

5. IF SOVIETS PROPOSE THAT THE NICE CLASSIFICATION BE LIMITED OFFICIAL USE

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ESTABLISHED IN THE RUSSIAN LANGUAGE AS AN AUTHENTIC TEXT, THE SAME ARGUMENTS CITED IN PARAGRAPH 4 ABOVE MAY BE USED AGAINST SUCH A PROPOSAL AND USDEL SHOULD OPPOSE IT. THERE ARE ONLY 29,000 REGISTRATIONS IN FORCE IN THE SOVIET UNION. SIMILAR ARGUMENTS MAY BE USED AGAINST THE TEXT OF THE NICE AGREEMENT ITSELF BEING ESTABLISHED IN RUSSIAN AS AN AUTHENTIC TEXT.

6. AS A FURTHER FALL-BACK, AND IF THERE IS A CONSENSUS AMONG GROUP B COUNTRIES, USDEL MAY AGREE TO ENGLISH, FRENCH, RUSSIAN, AND SPANISH AS EQUALLY AUTHENTIC TEXTS OF THE AGREEMENT. HOWEVER, USDEL SHOULD INSIST THAT THE NICE CLASSIFICATION BE ESTABLISHED IN ENGLISH AND FRENCH ONLY, CITING THE RATIONALE CONTAINED IN PARAGRAPH 4 ABOVE. VANCE

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